Supreme Court, U.S.
FILED

99 3 4 JUN 3 0 1999

OFFICE OF THE CLERK

No. _____

In The

Supreme Court of the United States

YANKTON SIOUX TRIBE,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eighth Circuit

PETITION FOR WRIT OF CERTIORARI

JAMES G. ABOUREZK*
ABOUREZK LAW OFFICES, P.C.
P.O. Box 1164
Sioux Falls, SD 57101-1164
(605) 334-8402
Attorneys for Petitioner

**Counsel of Record*

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

22PP

QUESTION PRESENTED FOR REVIEW

I. WHETHER AN INDIAN TRIBE'S SOVEREIGN IMMUNITY CAN BE WAIVED ABSENT A CLEAR AND UNEQUIVOCAL CONGRESSIONAL STATEMENT OF WAIVER.

LIST OF PARTIES

Yankton Sioux Tribe
United States of America
William H. Weddell

TABLE OF CONTENTS

	Page
QUESTION PRESENTED FOR REVIEW	i
LIST OF PARTIES	ii
TABLE OF CONTENTS	iii
TABLE OF AUTHORITIES	iv
PETITION FOR WRIT OF CERTIORARI	1
OPINIONS BELOW	1
JURISDICTIONAL STATEMENT	1
STATUTORY PROVISIONS INVOLVED	1
STATEMENT OF THE CASE	2
REASONS FOR GRANTING THE WRIT	4
I. THE COURT OF APPEALS HAS DECIDED AN IMPORTANT FEDERAL QUESTION IN A MANNER WHICH CONFLICTS WITH RELEVANT AND SETTLED DECISIONS OF THIS COURT	4
II. THE ACT PROVIDES NO CLEAR AND UNEQUIVOCAL WAIVER OF INDIAN TRIBES' SOVEREIGN IMMUNITY	9
THIS CASE REPRESENTS AN ISSUE OF NATIONAL IMPORTANCE	10
CONCLUSION	11
APPENDIX	App. 1

TABLE OF AUTHORITIES

Page

FEDERAL CASES

Alden v. Maine, ___ U.S. ___ (No. 98-436) 8

Atascadero State Hospital v. Scanlon, 478 U.S. 234 (1985) 7

Edelman v. Jordan, 415 U.S. 651 (1974) 7

Employees v. Department of Public Health and Welfare, 411 U.S. 279 (1973) 7

Hagen v. Utah, 114 S. Ct. 1580 (1994) 5

Parden v. Terminal Railway, 377 U.S. 184 (1964) 6, 7

Puyallup Tribe, Inc. v. Washington Department of Game, 433 U.S. 165, 97 S. Ct. 2616, 53 L. Ed. 2d 667 (1977) 6

Santa Clara Pueblo v. Martinez, 436 U.S. 49, 98 S. Ct. 1670 (1978) 5, 6, 7, 9

Turner v. United States, 248 U.S. 354, 39 S. Ct. 109, 63 L. Ed. 291 (1919) 6

United States v. Mississippi, 380 U.S. 128, 85 S. Ct. 808, 13 L. Ed. 717 (1965) 6, 8

United States v. Red Lake Band of Chippewa Indians, 827 F.2d 380 (8th Cir. 1987) 6, 8

United States v. Testan, 424 U.S. 392, 96 S. Ct. 948, 47 L. Ed. 2d 114 (1976) 6

United States v. King, 395 U.S. 1, 89 S. Ct. 1501, 23 L. Ed. 2d 52 (1969) 6

United States v. United States Fidelity & Guaranty Co., 309 U.S. 506, 60 S. Ct. 653, 84 L. Ed. 894 (1940) 6

TABLE OF AUTHORITIES – Continued

Page

United States v. William H. Weddell and Yankton Sioux Tribe, Garnishee, 12 F.Supp.2d 999 (D.S.D. 1998) 1, 3, 4

United States of America v. William H. Weddell & Yankton Sioux Tribe, Unpublished Opinion, Eighth Circuit Court of Appeals, Filed May 20, 1999 ..... 1, 4

FEDERAL STATUTES

28 U.S.C. § 1254(1) 1

28 U.S.C. §§ 3001 et seq. 1, 5

28 U.S.C. § 3002(3)(B) 5

PETITION FOR WRIT OF CERTIORARI

Petitioner, Yankton Sioux Tribe, respectfully prays that a Writ of Certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Eighth Circuit entered on May 20, 1999, in the above-entitled proceeding.

OPINIONS BELOW

United States of America v. William H. Weddell & Yankton Sioux Tribe, 12 F.Supp.2d 999, reprinted in the appendix. App. 1.

United States of America v. William H. Weddell & Yankton Sioux Tribe, Unpublished Opinion, Eighth Circuit Court of Appeals, Filed May 20, 1999, reprinted in the appendix. App. 5.

JURISDICTIONAL STATEMENT

The judgment of the court of appeals was entered on May 20, 1999. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

Federal Debt Collection Procedure Act, 28 U.S.C. §§ 3001 *et seq.*

STATEMENT OF THE CASE

On May 19, 1998, the United States, through the United States Attorney for South Dakota, filed and served on the Yankton Sioux Tribe (Tribe) an application for a Writ of Continuing Garnishment with respect to a debt owed to the United States by a Tribal employee, one William H. Weddell, who was the Defendant in the original debt collection action. The Tribe filed a motion to dismiss on grounds that it was immune from the garnishment action on grounds of its sovereign immunity, asserting that by virtue of the Tribe's immunity, the District Court lacked jurisdiction over the Tribe. The Tribe argued that the Federal Debt Collection Procedure Act, 28 U.S.C. §§ 3001-3308 (the Act) did not provide a clear and unequivocal expression of waiver of the Tribe's sovereign immunity as required by precedents of this Court.

The Act's only mention of Indians or Indian Tribes are as follows:

> 28 U.S.C. § 3002(3): "Debt" means –
>
> . . . any amount owing to the United States for the benefit of an Indian tribe or individual Indian,. . . .
>
> 28 U.S.C. § 3002(10): "Person" includes a natural person (including an individual Indian), a partnership, an unincorporated association, a trust, or an estate, or any other public or private entity, including a State or local government or an Indian tribe."
>
> 28 U.S.C. § 3002(12): "Property" includes any present or future interest, whether legal or equitable, in real, personal (including choses in

> action), or mixed property, tangible or intangible, vested or contingent, wherever located and however held (including community property and property held in trust (including spendthrift and pension trusts), but excludes –
>
> (A) property held in trust by the United States for the benefit of an Indian tribe or individual Indian; and
>
> (B) Indian lands subject to restriction against alienation imposed by the United States.

There is no mention of sovereign immunity in the Act, whether waiver or non-waiver. Nor is there a waiver of tribal sovereign immunity by implication. There is only the list of definitions cited above.

The District Court, the Honorable Lawrence Piersol presiding, denied the Tribe's Motion to Dismiss, holding that the Act was an unequivocal expression of Congress' waiver of the Tribe's sovereign immunity, thereby requiring the Tribe to pay over to the United States the monies in its possession in which the Defendant had a non-exempt interest. *United States of America v. William H. Weddell and Yankton Sioux Tribe,* 12 F.Supp.2d 999 (1999). The District Court held that:

> § 3002(7) of the Act defines a "garnishee" as a person (other than the debtor) who has, or is reasonably thought to have, possession, custody, or control of any property in which the debtor has a substantial nonexempt interest, including any obligation due the debtor or to become due the debtor, and against whom a garnishment under § 3104 or § 3205 is issued by a court.
>
> § 3002(10) defines a "person" to include a natural person (including an individual Indian),

> a corporation, a partnership, an unincorporated association, a trust, or an estate, or any other public or private entity, including a State or local government or an Indian tribe. . . .
>
> Reading these statutory provisions together, the clear language supports a conclusion that Congress waived the sovereign immunity of Indian tribes. The Yankton Sioux Tribe may be sued as a garnishee, **just as other sovereigns – state or local governments – may be sued,** . . . (Emphasis added). 12 F.Supp.2d at 1000.

The District Court's judgment was appealed to the Eighth Circuit Court of Appeals, which entered an unpublished opinion on May 20, 1999, affirming, without discussion, the lower court's ruling. *United States of America v. William H. Weddell and Yankton Sioux Tribe, Garnishee,* Eighth Circuit Court of Appeals, Unpublished Opinion entered May 20, 1999. App. 5.

REASONS FOR GRANTING THE WRIT

I

THE COURT OF APPEALS HAS DECIDED AN IMPORTANT FEDERAL QUESTION IN A MANNER WHICH CONFLICTS WITH RELEVANT AND SETTLED DECISIONS OF THIS COURT.

The Court of Appeals for the Eighth Circuit has decided an important federal question, i.e., whether or not the Act in question has waived the sovereign immunity of Indian tribes pursuant to this Court's precedents, in a manner which conflicts with settled and relevant decisions of this Court.

The specific question of federal law to be settled by this Court is whether or not Congress, in the Federal Debt Collection Procedure Act 28 U.S.C. § 3001 *et seq.*, clearly and unequivocally waived the sovereign immunity of Indian tribes, thereby allowing federal courts to order garnishment procedures against such tribes. The Act provides only definitions of India..s and Indian Tribes, and nowhere does it waive, either directly or by implication, an Indian tribe's sovereign immunity. The lower courts have extrapolated these definitions into some sort of waiver of tribal sovereign immunity. The definitions may just as easily apply to that part of the Act that requires the United States, in its role as trustee for Indian tribes, to collect debts on behalf of Indian tribes. 28 U.S.C. §§ 3002(3)(B). The lack of any "unequivocal" waiver creates an ambiguity which definitely violates this Court's long held canons with respect to tribal sovereign immunity. *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 98 S.Ct. 1670 (1978). The definitions apply to the United States' obligation to collect debts for the Tribe, but they do not necessarily apply to debts against the Tribe, absent specific Congressional authorization, which does not exist here. Even if the Act is viewed in a light most favorable to the United States, the definitions of Indian and Indian Tribe in the Act are ambiguous and do not rise to the level of an unequivocal waiver required by this Court. Moreover, any such ambiguities must be resolved in favor of the Indian tribes. *Hagen v. Utah*, 114 S.Ct. 1580 (1994).

This Court has said, in *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 98 S.Ct. 1670, that a waiver of sovereign immunity "cannot be implied but must be unequivocally

expressed." See also *United States v. Testan*, 424 U.S. 392, 399, 96 S.Ct. 948, 953, 47 L. Ed. 2d 114 (1976), quoting *United States v. King*, 395 U.S. 1, 4, 89 S.Ct. 1501, 1502, 23 L. Ed. 2d 52 (1969).

Indian tribes have long been recognized as possessing the common-law immunity from suit traditionally enjoyed by sovereign powers. *Santa Clara Pueblo*, 98 S.Ct. at 1677; *Turner v. United States*, 248 U.S. 354, 358, 39 S.Ct. 109, 110, 63 L. Ed. 291 (1919); *United States v. United States Fidelity & Guaranty Co.*, 309 U.S. 506, 512-513, 60 S.Ct. 653, 656, 84 L. Ed. 894 (1940); *Puyallup Tribe, Inc. v. Washington Dept. of Game*, 433 U.S. 165, 172-173, 97 S.Ct. 2616, 2620-2621, 53 L. Ed. 2d 667 (1977). This aspect of tribal sovereignty, like all others, is subject to the superior and plenary control of Congress. But "without congressional authorization," the "Indian Nations are exempt from suit." *Santa Clara Pueblo*, 98 S.Ct. at 1677; *United States v. United States Fidelity & Guaranty Co.*, supra, 309 U.S. at 512, 60 S.Ct. at 656.

The government has argued before the Eighth Circuit the case of *United States v. Red Lake Band of Chippewa Indians*, 827 F.2d 380 (8th Cir. 1987), as authority for the proposition that, "sovereign immunity may not bar an action by the United States against an Indian Tribe." However, the Eighth Circuit Court's holding in *Red Lake* relies on the precedent of *United States v. Mississippi*, 380 U.S. 128, 85 S.Ct. 808, 13 L. Ed. 717 (1965), as its basis for ruling that states cannot use sovereign immunity to bar a suit by the Federal government. *Mississippi* has been progressively altered over the past few years and has now been completely overruled by this Court. Initially, the 1964 case of *Parden v. Terminal Railway*, 377 U.S. 184

(1964), altered the pre-1964 requirement that a state must give its consent to a suit. This Court in *Parden* developed the concept of "constructive waiver" of sovereign immunity which in effect destroyed the eleventh amendment's prohibition against suing a state. The rule in *Parden*, however, began to change with the decision in *Employees v. Department of Public Health and Welfare*, 411 U.S. 279 (1973), when this Court signaled that the federal government's waiver of a state's sovereign immunity would not be presumed without clear evidence of congressional purpose. *Id.* at 285. The constructive waiver in the *Parden* court gave way further in *Edelman v. Jordan*, 415 U.S. 651 (1974), in which this Court said that state participation in a federal program could not in itself be taken to signify consent by the state to be sued in federal courts. The *Edelman* Court declined to find constructive waiver where "the only language in the [federal legislation] which purported to provide a federal sanction against a state by its terms did not authorize suit against anyone." 415 U.S. at 674. Then, in *Atascadero State Hospital v. Scanlon*, 478 U.S. 234 (1985), the Court stated that it would not impute to Congress any intent to abrogate the states' eleventh amendment immunity that was not apparent on the face of the relevant statute.

The nearly exact parallel with respect to tribal sovereign immunity is this Court's statement in *Atascadero* that, "Rather, when Congress wants to subject the states to suit in federal court, it must express that intent in unmistakable language in the statute itself." *Id.* at 243. This Court in *Santa Clara Pueblo* has taken the same position with respect to Indian Tribes. See also Laurence H. Tribe, *American Constitutional Law*, 2d edition, pp. 179-183. The

recent ruling by this Court in *Alden v. Maine*, ___ U.S. ___ (No. 98-436) (1999), has taken this proposition even further by holding that, " . . . the powers delegated to Congress under Article I of the United States Constitution do not include the power to subject nonconsenting States to private suits for damages in state courts."

In this case, both the District Court and the Court of Appeals have based their rulings on the invalid concept that state sovereign immunity has been eroded, a concept which no longer exists so far as this Court's holdings are concerned.

The Eighth Circuit Court's *Red Lake* decision is faced with a shift in this Court's decisions with respect to the States, so far as stripping Indian Tribes of their sovereign immunity when Congress has chosen not to do so by legislation. The parallel is inescapable: Although *Red Lake*, relying upon *United States v. Mississippi* as authority, laid down the rule that the administrative branch of the federal government could, at its own whim, and without a specific immunity waiver by Congress, bring suit against an Indian tribe without that tribe's consent, the foundation underlying that ruling has been destroyed by the progression of this Court's rulings reverting back to the dictates and the protection of the eleventh amendment. Just as the federal government cannot make a state a garnishee in one of their collection cases without clear and unambiguous Congressional authorization, neither can the federal government make an Indian Tribe a garnishee without specific Congressional consent, which in this case, does not exist.

The dictates of *Santa Clara Pueblo v. Martinez*, and the progression of eleventh amendment cases, invite this Court to demand the existence of specific Congressional language before tribal sovereign immunity can be waived.

When viewed as a separate sovereign, as Indian tribes are held to be, it is clearly wrong to allow the federal government to intrude upon the tribes' ability to govern themselves, when, instead of a Congressional directive, the whim of an Assistant U.S. Attorney can force a garnishment action upon the tribes. If the general view is that tribes are to be left alone to run their own government, see *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 98 S.Ct. 1670, then there is no logic to permitting the administrative branch of the federal government to act as though it were a legislature and sue a tribe whenever it wishes to do so. Such a permissive attitude will act to destroy tribal self-determination and tribal self-government, which cannot exist when there has been no clear legislative waiver of tribal sovereign immunity. This standard calls for clear and unequivocal Congressional authority before an Indian tribe's effort to govern itself can be intruded upon by the administrative branch of government.

II.

THE ACT PROVIDES NO CLEAR AND UNEQUIVOCAL WAIVER OF INDIAN TRIBES' SOVEREIGN IMMUNITY

Any fair reading of the FDCPA falls extremely short of an "unequivocal" congressional waiver of immunity

required by this Court's precedents. Indians and Indian tribes are mentioned only in the definition section of the statute. Anyone analyzing the statute is left to wonder exactly where in the statute the government's alleged waiver of sovereign immunity exists. Nowhere in the Act is there clear, specific and unambiguous language stating that the sovereign immunity of Indian tribes is waived. Surely, the existence of mere definitions of Indian and Tribe cannot be considered to be a clear Congressional expression of waiver. These are much too vague to be a fulfilment of this Court's requirements. Moreover, the ambiguity of the existence of only definitions is compounded by the requirement that the United States collect debts in behalf of Indian Tribes. Unfortunately, Congress has left everyone to wonder what it meant when it included the definitions of Indian Tribes in the Act, but failed to clearly state whether or not Indian tribes' immunity has been waived. If Congress had intended to waive the immunity of Indian tribes, surely it knew how to do so in its legislation. In the absence of such a clear waiver by Congress, the immunity of tribes must still stand, and a garnishment action against tribes by the United States must be barred.

THIS CASE REPRESENTS AN ISSUE OF NATIONAL IMPORTANCE

The outcome of this case affects every Indian tribe in the United States. Its importance lies in whether an erroneous precedent will be allowed to stand, a precedent set by the Eighth Circuit Court of Appeals which conflicts with, and ignores settled law set by this Court over the

years. It will have a negative effect on every Indian tribe in the United States, in that the holding now permits the United States government to avoid this Court's policy with respect to requiring an unequivocal sovereign immunity waiver before an Indian Tribe can be subjected to intrusion on its self-government.

CONCLUSION

The Yankton Sioux Tribe respectfully requests that, for the reasons stated above, the Petition for a Writ of Certiorari be granted.

Respectfully submitted,

James G. Abourezk
Abourezk Law Offices, P.C.
P.O. Box 1164
Sioux Falls, SD 57101-1164
Tel: (605) 334-8402
Fax: (605) 334-9404
Attorneys for the
Yankton Sioux Tribe

UNITED STATES of America, Plaintiff,

v.

William H. WEDDELL, Defendant,

and

Yankton Sioux Tribe, Marty, South Dakota, Garnishee.

No. Civ. 97-4132.

United States District Court,
D. South Dakota,
Southern Division.

July 30, 1998.

LeAnn Larson LaFave, Sioux Falls, SD, for Plaintiff.

William H. Weddell, Wagner, SD, pro se.

ORDER DENYING MOTION
TO DISMISS GARNISHMENT

PIERSOL, District Judge.

The Garnishee, Yankton Sioux Tribe, moves to dismiss this garnishment action against tribal member William H. Weddell on the basis of the Tribe's sovereign immunity. The government resists the motion. For the reasons stated below, the Court denies the motion to dismiss.

It is well established that Indian tribes possess the same common law immunity from suit traditionally enjoyed by sovereign powers, but this aspect of tribal sovereignty, like all others, is subject to "the superior and

plenary control of Congress." *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 58, 98 S.Ct. 1670, 1677, 56 L.Ed.2d 106 (1978); *Val-U Constr. Co. v. Rosebud Sioux Tribe*, 146 F.3d 573, 574 (8th Cir.1998); *Dillon v. Yankton Sioux Tribe Housing Auth.*, to be reported at 144 F.3d 581, 582 (8th Cir.1998); *In re Prairie Island Dakota Sioux*, 21 F.3d 302, 304 (8th Cir.1994). "Congress has the power to statutorily waive a tribe's sovereign immunity." *Northern States Power Co. v. Prairie Island Mdewakanton Sioux Indian Community*, 991 F.2d 458, 462 (8th Cir.1993). The district court must tread lightly in the absence of clear indications of legislative intent to waive a tribe's sovereign immunity. *Id.* A waiver of sovereign immunity cannot be implied, but must be unequivocally expressed. *Id.*

The Court concludes that Congress unequivocally expressed a waiver of the Indian tribes' sovereign immunity in the clear and unambiguous language of the Federal Debt Collection Procedure Act, 28 U.S.C. §§ 3001-3308 (the Act), and that in this case the Yankton Sioux Tribe, as garnishee, must pay over to the federal government for payment of a debt owed to the United States the personal property in its possession in which defendant William H. Weddell has a nonexempt interest.

Section 3002(7) of the Act defines a "garnishee" as "a person (other than the debtor) who has, or is reasonably thought to have, possession, custody, or control of any property in which the debtor has a substantial nonexempt interest, including any obligation due the debtor or to become due the debtor, and against whom a garnishment under section 3104 or 3205 is issued by a court." Section 3002(10) defines a "person" to include "a natural person

(including an individual Indian), a corporation, a partnership, an unincorporated association, a trust, or an estate, or any other public or private entity, including a State or local government or an Indian tribe." Section 3002(12) excludes from the definition of property subject to federal debt collection any property held in trust by the United States for the benefit of an Indian tribe or an individual Indian, and Indian lands which are subject to restrictions against alienation imposed by the United States.

Reading these statutory provisions together, the clear language supports a conclusion that Congress waived the sovereign immunity of Indian tribes. The Yankton Sioux Tribe may be sued as a garnishee, just as other sovereigns – state or local governments – may be sued, and any property in which an individual Indian debtor has a nonexempt interest that is neither property held in trust nor real property with restrictions on alienation is subject to garnishment. *See Prairie Island Mdewakanton Sioux Indian Community*, 991 F.2d at 462 (holding that Hazardous Materials Transportation Act expressly subjected Indian tribes to Act's preemption rules); *Blue Legs v. United States Bureau of Indian Affairs*, 867 F.2d 1094, 1096-97 (8th Cir.1989) (holding, by reading definitional statutes together, that Resource Conservation and Recovery Act waived tribe's sovereign immunity).

Because the Court concludes on the basis of the express and unambiguous statutory language that Congress waived the Yankton Sioux Tribe's sovereign immunity in the Act, the Court need not consider whether the legislative history of the Act sheds any light on the issue presented. Nonetheless, the Court observes that the legislative history of the Act cited in the government's brief at

pages eight and nine supports the Court's legal conclusion. Accordingly,

IT IS ORDERED that the Yankton Sioux Tribe's Motion To Dismiss Garnishment is denied. (Doc. 18.)

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 98-3170

United States of America,	*	
Plaintiff-Appellee,	*	
v.	*	Appeal from the United
William H. Weddell;	*	States District Court for
Defendant,	*	the District of South
	*	Dakota.
Yankton Sioux Tribe,	*	[UNPUBLISHED]
Marty, South Dakota,	*	
Garnishee-Appellant.	*	

Submitted: May 11, 1999
Filed: May 20, 1999

Before McMILLIAN, HEANEY, and FAGG, Circuit Judges.

PER CURIAM.

Yankton Sioux Tribe appeals the district court's denial of the Tribe's motion to dismiss the Government's postjudgment garnishment of a tribal employee under the Federal Debt Collection Procedures Act on the basis of the Tribe's sovereign immunity. Having reviewed the record and the parties' briefs, we are satisfied the district court's ruling that the Act waives the Tribe's sovereign immunity was correct. We also conclude that an extended

discussion is not warranted. We thus affirm for the reasons stated by the district court. *See* 8th Cir. R. 47B.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.

(2)

Supreme Court, U.S.
FILED
AUG

No. 99-34

In the Supreme Court of the United States

YANKTON SIOUX TRIBE, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

SETH P. WAXMAN
Solicitor General
Counsel of Record

DAVID W. OGDEN
Acting Assistant Attorney General

MARK B. STERN
ROBERT M. LOEB
Attorneys

Department of Justice
Washington, D.C. 20530-0001
(202) 514-2217

9 pp

QUESTION PRESENTED

Whether under the Federal Debt Collection Procedures Act of 1990, 28 U.S.C. 3001 *et seq.*, the United States may obtain and enforce an order of garnishment directed to an Indian Tribe as garnishee.

In the Supreme Court of the United States

No. 99-34

YANKTON SIOUX TRIBE, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 5-6) is unpublished. The opinion of the district court (Pet. App. 1-4) is reported at 12 F. Supp. 2d 999.

JURISDICTION

The judgment of the court of appeals was entered on May 20, 1999. The petition for a writ of certiorari was filed on June 30, 1999. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. In August 1997, the United States sued William Weddell to collect on a delinquent student loan. Gov't C.A. Br. i. The district court entered a default judg-

ment in favor of the government. The United States sought to enforce the judgment by garnishing Weddell's wages, as authorized by the Federal Debt Collection Procedures Act of 1990 (FDCPA), 28 U.S.C. 3205. Weddell was employed by petitioner, the Yankton Sioux Tribe of South Dakota. In May 1998, the district court issued a continuing writ of garnishment, which was served on petitioner as garnishee. Gov't C.A. Br. i.

Petitioner moved to dismiss the garnishment proceeding, asserting tribal sovereign immunity from judicial process. Pet. App. 1. The district court denied the motion. *Id.* at 1-4. The court explained (*id.* at 2-3) that the FDCPA defines a "garnishee" as "a person (other than the debtor) who has * * * possession, custody, or control of any property in which the debtor has a substantial nonexempt interest * * * and against whom a garnishment * * * is issued by a court," 28 U.S.C. 3002(7), and defines the term "person" to include "a natural person (including an individual Indian), a corporation, a partnership, an unincorporated association, a trust, or an estate, or any other public or private entity, including a State or local government *or an Indian tribe*," 28 U.S.C. 3002(10) (emphasis added). Reading those definitions together with 28 U.S.C. 3002(12), which excludes from the Act's definition of "property" any land held by the government in trust for Tribes or Indians, and any Indian land subject to federal restraints on alienation, the court concluded that "Congress unequivocally expressed a waiver of the Indian tribes' sovereign immunity in the clear and unambiguous language of the * * * Act." Pet. App. 2.

The court of appeals affirmed. Pet. App. 5-6. In a brief per curiam order, the court noted that it had "reviewed the record and the parties' briefs" and that it

was "satisfied the district court's ruling that the Act waives the Tribe's sovereign immunity was correct." *Id.* at 5. Concluding that "an extended discussion [was] not warranted," the court "affirm[ed] for the reasons stated by the district court." *Id.* at 5-6.

ARGUMENT

1. On July 2, 1999, the district court terminated the garnishment order at issue in this case, on the ground that the underlying debt to the United States has been satisfied. See App., *infra*, 1a. There is accordingly no present case or controversy between the parties.[1]

2. Indian Tribes, like the States (and the United States), are generally immune from being sued without their own consent. *Kiowa Tribe* v. *Manufacturing Techs., Inc.*, 523 U.S. 751 (1998).[2] Even a State's immunity from suit in federal court does not extend, however, to suits brought by the United States. See, *e.g.*, *Alden* v. *Maine*, 119 S. Ct. 2240, 2267 (1999);

---

[1] As we explain below, denial of certiorari would be appropriate even if the case were not moot. There is accordingly no reason for this Court to grant the petition and vacate the judgment below. Compare, *e.g.*, *Velsicol Chem. Corp.* v. *United States*, 435 U.S. 942 (1978) (denying certiorari) with, *e.g.*, *United States* v. *Munsingwear, Inc.*, 340 U.S. 36, 39-41 (1950) (discussing vacatur on grounds of mootness); see U.S. Br. in Opp. at 4-11, *Velsicol*, *supra* (No. 77-900); R. Stern et al., *Supreme Court Practice* 257-258, 724 & n.29 (7th ed. 1993).

[2] Tribal immunity from suit "is not coextensive with that of the States." *Kiowa*, 523 U.S. at 756. In the absence of contrary congressional action, for example, federal law protects Tribes, unlike States, from suit either in federal court or in the courts of any State. See *id.* at 755-756 (distinguishing *Nevada* v. *Hall*, 440 U.S. 410 (1979)). On the other hand, as petitioner recognizes (Pet. 6), the immunity of Tribes, unlike that of the States, "is subject to the superior and plenary control of Congress." Compare, *e.g.*, *Alden* v. *Maine*, 119 S. Ct. 2240 (1999).

United States v. *Mississippi*, 380 U.S. 128, 140-141 (1965); *Principality of Monaco* v. *Mississippi*, 292 U.S. 313, 328-329 (1934). *A fortiori*, a Tribe's residual sovereignty cannot shield it from suit by the United States. See *United States* v. *Red Lake Band of Chippewa Indians*, 827 F.2d 380, 383 (8th Cir. 1987) ("[J]ust as a state may not assert sovereign immunity as against the federal government, neither may an Indian tribe, as a dependent nation, do so.") (citation omitted), cert. denied, 485 U.S. 935 (1988); *Florida Paraplegic Ass'n* v. *Miccosukee Tribe of Indians*, 166 F.3d 1126, 1134-1135 (11th Cir. 1999); *Reich* v. *Mashantucket Sand & Gravel*, 95 F.3d 174, 182 (2d Cir. 1996). Petitioner's arguments to the contrary (Pet. 6-9) notwithstanding, nothing in this Court's cases has ever called that proposition into question. See *Alden*, 119 S. Ct. at 2267.

3. Petitioner concedes, in any event, that Congress may authorize suits against a Tribe, so long as it does so "unequivocally." See Pet. 5-6; see also *Santa Clara Pueblo* v. *Martinez*, 436 U.S. 49, 58-59 (1978) (discussing immunity from suits brought by private parties). Both courts below applied that standard, and held that Congress unequivocally authorized judicial action against Tribes under the Federal Debt Collection Procedures Act of 1990, 28 U.S.C. 3001 *et seq.* See Pet. App. 2-3, 5-6. Under the plain language of the Act—which authorizes garnishment of property held by "garnishees," 28 U.S.C. 3205, defines a "garnishee" as a "person," 28 U.S.C. 3002(7), and defines "person" to include "an Indian tribe," 28 U.S.C. 3002(10)—that conclusion is inescapably correct. See also *Blue Legs* v. *United States Bureau of Indian Affairs*, 867 F.2d 1094, 1096-1097 (8th Cir. 1989) (applying similar analysis to hold that Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6901 *et seq.*, authorizes suits against

Tribes by private parties); *Northern States Power Co.* v. *Prairie Island Mdewakanton Sioux Indian Community*, 991 F.2d 458, 462-463 (8th Cir. 1993) (Hazardous Materials Transportation Act, 49 U.S.C. 5101 *et seq.*). The decision below does not conflict with any decision of this Court or of any other court of appeals, and there is no reason for further review.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

SETH P. WAXMAN
Solicitor General

DAVID W. OGDEN
Acting Assistant Attorney General

MARK B. STERN
ROBERT M. LOEB
Attorneys

AUGUST 1999

APPENDIX

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

Civil Action No. 97-4132

UNITED STATES OF AMERICA, PLAINTIFF

v.

WILLIAM H. WEDDELL, DEFENDANT

AND

YANKTON SIOUX TRIBE,
MARTY, SOUTH DAKOTA, GARNISHEE

[Filed July 02, 1999]

ORDER TERMINATING CONTINUING GARNISHMENT

Based upon the Motion on file herein, and pursuant to 28 U.S.C. § 3205(c)(10)(C),

IT IS ORDERED that the Garnishment herein is hereby terminated by order of this Court.

Dated this 2nd day of July, 1999.

BY THE COURT;

/s/ LAWRENCE L. PIERSOL
LAWRENCE L. PIERSOL
CHIEF JUDGE

ATTEST:

JOSEPH HAAS, CLERK

BY: SHELLY MARGULIES
DEPUTY CLERK

(SEAL OF THE COURT)